

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

RICHARD HENDERSON,

Plaintiff,

v.

AMERICAN AMICABLE LIFE
INSURANCE COMPANY OF TEXAS,
(PIONEER AMERICAN INSURANCE),

Defendants.

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Civil Action No. 4:21-cv-3416

Jury Trial Demanded

COMPLAINT

RICHARD HENDERSON (hereinafter referred to as “Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against AMERICAN AMICABLE LIFE INSURANCE COMPANY OF TEXAS (hereinafter referred to as “AMERICAN AMICABLE”) and PIONEER AMERICAN INSURANCE (hereinafter referred to as “PIONEER” (hereinafter collectively referred to as “Defendants”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §227, *et seq.*, and § 302.101 of the Texas Business & Commercial Code.

JURISDICTION AND VENUE

2. This Court has subject-matter jurisdiction over the TCPA claims in this action under 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States. See Mims v. Arrow Fin. Servs., LLC, 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United States district courts federal-question subject-matter jurisdiction to hear private civil suits under the TCPA).

1 14. Plaintiff registered that cell phone number on the Federal Do Not Call Registry
2 on May 13, 2010.

3 15. At all times relevant hereto, Plaintiff, Richard Henderson, maintained a cell
4 phone, the number for which was (832) XXX-7629.

5 16. Plaintiff registered that cell phone number on the Federal Do Not Call Registry
6 on November 11, 2010.

7 17. Mr. Henderson registered these cell phone numbers on the Do Not Call list in
8 order to obtain solitude from invasive and harassing telemarketing calls.

9 18. Defendants are insurance agencies that sell to consumers, *inter alia*, life
10 insurance policies.

11 19. Defendants engage in telemarketing in order to solicit business.

12 20. Between July 2020 through at least March of 2021, Defendants placed a series of
13 solicitation calls to Plaintiff in order to sell Plaintiff a life insurance policy.

14 21. Defendants' phone calls to Plaintiff utilized an automatically generated and/or
15 pre-recorded voice.

16 22. Mr. Henderson did not consent to those calls from Defendants.

17 23. Defendants' solicitation calls were not made for "emergency purposes."

18 24. Defendants knew their calls were unwanted, therefore, all texts could have only
19 been made solely for purposes of harassment.

20 25. Defendants incessant calls were bothersome, disruptive, and frustrating for
21 Plaintiff to endure.

22 26. In total, Defendants placed at least 18 calls to Plaintiff, at date/times including
23 the following calls to his personal phone ending in 2765.
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Date/Time:	Caller ID:
July 1, 2020 4:30 pm Central	(281) 571-0865
July 17, 2020 12:46 pm Central	(281) 929-3263
July 24, 2020 3:57 pm Central	(281) 544-3353
October 5, 2020 2:22 pm Central	(281) 390-5970
November 4, 2020 4:25 pm Central	(281) 658-9707
February 17, 2021 2:45 pm Central	(561) 855-5956
February 17, 2021 2:57 pm Central	(561) 316-1353
March 3, 2021 2:42 pm Central	(270) 341-3324
March 15, 2021 7:00 pm Central	(937) 610-1765

27. Upon information and belief, Plaintiff received additional calls to the phone number ending in 2765 from Defendants not included in the above list.

28. Plaintiff additionally received calls to the phone number ending in 7629 which is maintained by Plaintiff, including the following calls:

Date/Time:	Caller ID:
November 2, 2020 1:40 pm Central	(832) 232-0163
November 9, 2020 4:12 pm Central	(832) 256-5401
December 4, 2020 10:03 am Central	(832) 286-8275
December 4, 2020 10:54 pm Central	(832) 260-0151
December 8, 2020 3:00 pm Central	(832) 239-1950
February 1, 2021 6:40 pm Central	(832) 298-2074
February 16, 2021 9:08 am Central	(832) 247-4620
February 17, 2021 2:24 pm Central	(832) 290-1572
March 18, 2021 7:19 pm Central	(832) 252-5317

29. Upon information and belief, Plaintiff received additional calls from Defendants not included in the above-list.

30. Many of the calls placed by Defendants to Mr. Henderson began with a pause followed by a beep, which was then followed by someone greeting Mr. Henderson, but only after Mr. Henderson spoke.

31. For instance, in a call placed by Defendants on February 17, 2021, when Plaintiff answered the call there was a long pause, followed by a beep, then a representative answered

1 the phone stating he was “John with American Senior Benefits.” The representative began
2 asking Plaintiff personal questions to which Plaintiff stated he would only discuss these matters
3 with a licensed agent. Following Plaintiff’s refusal to disclose personal information with any
4 individual other than a licensed agent, the line was disconnected.

5 32. These unwanted calls continued despite Mr. Henderson’s cellular phone numbers
6 being on the Do Not Call Registry since 2010.

7 33. Defendant did not have Plaintiff’s consent to call him on his cellular telephone
8 numbers.

9 34. Plaintiff did not request information regarding final expense life insurance.

10 35. Plaintiff requested Defendants stop contacting Plaintiff on or about July of 2020.

11 36. However, the calls continued.

12 37. As a result of the persistence of the unwanted solicitation calls, Mr. Henderson
13 tried to identify the company calling him. Plaintiff there by attempted to gather information
14 about the company that was behind the calls. Plaintiff asked on many occasions for the agent to
15 state which company they were calling from and to provide a website so Plaintiff could do his
16 own research. All of these attempts resulted in refusal by the agent or the line being
17 disconnected.
18

19 38. For instance, in a call placed by Defendants on November 4, 2020, Defendants’
20 agent asked Plaintiff who would be a beneficiary to his insurance policy. Plaintiff stated that he
21 would not provide that personal information to anyone other than a licensed agent, and
22 requested more information about the company, namely where it was located. Defendants’
23 agent responded by saying “I am located in back of your home” and shortly thereafter hung up
24 the phone and ended the call.
25

1 39. Ultimately, Plaintiff continued to get the unwanted calls, and spoke with a
2 licensed agent to which he was notified that the insurance policy would be through Pioneer
3 American Insurance.

4 40. Defendants continued to call Plaintiff for purposes of harassing Plaintiff through
5 March 2021.

6 41. As a result of the foregoing, Plaintiff experienced frustration, annoyance,
7 irritation and a sense that her privacy has been invaded by Defendants.

8 42. The foregoing acts and omissions were in violation of the TCPA and Texas
9 Business and Commercial Code.

10 **COUNT I**
11 **DEFENDANTS VIOLATED THE TCPA 47 U.S.C. § 227(b)**

12 43. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
13 at length herein.

14 44. The TCPA prohibits placing calls using an automatic telephone dialing system or
15 automatically generated or prerecorded voice to a cellular telephone except where the calling
16 has the prior express consent of the called party to make such calls or where the call is made for
17 emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

18 45. Defendants initiated numerous calls to Plaintiff's cellular telephone number
19 using an automatic telephone dialing system.

20 46. Specifically, Defendants utilize a dialing system which uses a random or
21 sequential number generator to store telephone numbers.

22 47. Defendants utilize a dialing system which uses a random or sequential number
23 generator to select the sequence of call/text messages to be sent/made.
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1 48. Defendants' calls were not made for "emergency purposes."

2 49. Defendants' calls to Plaintiff's cellular telephones were made without any prior
3 express consent.

4 50. Defendants contacted Plaintiff despite the fact that Plaintiff has been on the Do
5 Not Call Registry and despite the fact that Plaintiff told Defendants to stop their telephone
6 solicitations.

7 51. Defendants' acts as described above were done with malicious, intentional,
8 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
9 purpose of harassing Plaintiff.

10 52. The acts and/or omissions of Defendants were done unfairly, unlawfully,
11 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
12 defense, legal justification or legal excuse.

13 53. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
14 and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble
15 damages.
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17 **COUNT II**
18 **DEFENDANTS VIOLATED THE TCPA 47 U.S.C. § 227(c)**

19 54. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
20 at length herein.

21 55. The TCPA prohibits any person or entity of initiating any telephone solicitation
22 to a residential telephone subscriber who has registered his or her telephone number on the
23 National Do-Not-Call-Registry of persons who do not wish to receive telephone solicitations
24 that is maintained by the Federal Government. 47 U.S.C. § 227(c).
25

1 56. Defendants' contacted Plaintiff despite the fact that Plaintiff has been registered
2 on the Do Not Call Registry since 2010.

3 57. Defendants' acts as described above were done with malicious intentional,
4 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
5 purpose of harassing Plaintiff.

6 58. The acts and/or omissions of Defendants were done unfairly, unlawfully,
7 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
8 defense, legal justification or legal excuse.

9 59. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
10 and damages as set forth above entitling Plaintiff to an award of statutory, actual and treble
11 damages.

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13 **COUNT III**
14 **DEFENDANT VIOLATED § 302.101 OF**
 THE TEXAS BUSINESS & COMMERCIAL CODE

15 60. Plaintiff incorporates the foregoing paragraphs as though the same were set forth
16 at length herein.

17 61. Plaintiff is a "consumer" as defined by § 301.001(2) of the Texas Business and
18 Commerce Code.

19 62. Defendants are "telephone solicitors" as defined by § 301.001(5) of the Texas
20 Business and Commerce Code.

21 63. §302.101 of the Texas Business & Commerce Code prohibits sellers from
22 engaging in telephone solicitation from a location in this state or to a purchaser located in this
23 state unless the seller obtains a registration certificate from the Office of the Secretary of State
24 for the business location from which the solicitation is made.
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64. Defendants violated § 302.101 of the Texas Business & Commerce Code when their representatives engaged in continuous and rep repetitive telephone solicitation of Plaintiff without obtaining a registration certificate from the Office of the Secretary of State.

65. §302.302(a) of the Texas Business & Commerce Code provides that a person who violates this chapter is subject to a civil penalty of no more than \$5,000 for each violation. Furthermore, §302.302(d) provides that the party bringing the action is also entitled to recover all reasonable cost of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney fees.

WHEREFORE, Plaintiff, **RICHARD HENDERSON**, respectfully prays for judgment as follows:

- a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. § 227(b)(3)(A) and §302.302 of the Texas Business and Commerce Code);
- b. Statutory damages of \$500.00 per violative text/call (as provided under 47 U.S.C. § 227(b)(3)(B));
- c. Additional statutory damages of \$500.00 per violative text/call (as provided under 47 U.S.C. §227(c));
- d. Treble damages of \$1,500.00 per violative text/call (as provided under 47 U.S.C. § 227(b)(3));
- e. Additional treble damages of \$1,500.00 per text/call (as provided under 47 U.S.C. § 227(c);
- f. Statutory damages of \$5,000 per violation (as provided under §302.302(a) of the Texas Business & Commerce Code);
- g. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to. §302.302(a) of the Texas Business & Commerce Code;
- h. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3) and (c)); and
- i. Any other relief this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

1 PLEASE TAKE NOTICE that Plaintiff, RICHARD HENDERSON, demands a jury trial
2 in this case.

3 Respectfully submitted,

4 Dated:

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